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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/484,159	01/18/2000	Gary M. Lewis	2386.1012000	9346

21005 7590 05/09/2005

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EXAMINER

OPSASNICK, MICHAEL N

ART UNIT PAPER NUMBER

2655

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/484,159	LEWIS, GARY M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael N. Opsasnick	2655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7,14-18,20-23 and 32-37 is/are allowed.
- 6) ☒ Claim(s) 27-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/31/2005 has been entered.

### ***Allowable Subject Matter***

2. Claims 1-7,14-18,20-23,32-37 are allowable over the prior art of record.
3. The following is a statement of reasons for the indication of allowable subject matter: As per the independent claims 1,7,14,20,21,23 and 32, the recited limitations pertaining to the combination of a non-speech (defined as anything but spoken words) detection module, storing the non-speech identifier, and remove header routine detecting the state of the non-speech identifier, is not explicitly taught by the prior art of record.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paradine et al (6049565) in view of Sato et al (6078882).

As per claim 27, Paradine et al (6049565) teaches:

“an apparatus for transmitting audio over a data network comprising:” as audio communication coding detecting voice activity, and adjusting delays during silence (col. 2 line 30 – col. 3 line 15);

“a non-speech detection module.....speech audio” as removing fixed delay’s and changing the delay based on a voice/speech determination or a noise determination (col. 8 line 33 –col. 9 line 17).

“an add header routine.....data network” as data packets (col. 7 lines 32-58) with headers (Fig. 6);

Paradine et al (6049565) does not explicitly teach the non-speech identifier being stored in the header of the data packet, however, Sato et al (6078882) teaches a non-speech identifier being stored in the header (abstract, Fig. 2, Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art of data structures to modify the teachings of Paradine et al (6049565) with non-speech identifier storage in a header

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because it would reduce the unnaturalness of the reconstructed speech caused by speech spurts and pauses (Sato et al (6078882), col. 1 lines 48-62).

As per claim 28, Paradine et al (6049565) teaches length count equal to zero, which can be represented by 1 bit (fig. 6, subblock 615, col. 8 lines 1-4))

As per claim 29, Paradine et al (6049565) teaches real time processing (col. 5 lines 45-65)

As per claims 30,31, Paradine et al (6049565) teaches identifying states based on speech or background noise (col. 2 lines 30-43)

### ***Response to Arguments***

5. Examiner notes that the newly added claims, claims 27-31, are similar in scope and content to an older version of claims 7-11 (as found in the response submitted by applicant dated 8/23/2004). The examiner's "response to arguments" (dated 11/29/2004) are incorporated below (with modified claim number references).

As per independent claim 27, examiner argues that the combination of Paradine in view of Sato teaches the transmission of an indicator that no speech has been transmitted (as per Paradine, see page 7, 3<sup>rd</sup> paragraph of applicant's arguments), with storing that information in the data packet (modified Paradine, as dictated by Sato → abstract, Fig. 2, fig. 3). Paradine and Sato

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transmits audio containing voice activity including information regarding the time periods that there is no voice activity (i.e., an example of applicant's self-defined "non-speech" identifier).

### ***Conclusion***

6. Claims 27-31 are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. **Any response to this action should be mailed to:**

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872 9314,

(for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal

Drive, Arlington, VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Mr. David Ometz, can be reached at (571)272-7593. The facsimile phone number for this group is (571)272-7629.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (571) 272-2600, the 2600 Customer Service telephone number is (571)272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mno

5/4/05



DAVID L. OMETZ  
PRIMARY EXAMINER